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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,907	08/21/2003	Hans Boeck	Q74473	6445
23373	7590	11/02/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			MCCALL, ERIC SCOTT	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/644,907

Applicant(s)

BOECK ET AL.

Examiner

Eric S. McCall

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**TEST STAND WITH TIPPING DEVICE FOR MOTOR VEHICLES**

**FINAL OFFICE ACTION**

In response to the Applicant's amendment dated Aug. 06, 2004.

**CLAIMS**

**35 U.S.C. § 112**

In view of the Applicant's amendments, the rejections of claim 7 and claim 10 under 35 U.S.C. 112, second paragraph, as set forth in the previous office action of May 06, 2004 has been overcome.

**35 U.S.C. § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 9, 11, 12, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Claps (5,890,855).

With respect to claim 1, Claps teaches a stand for motor vehicles, having a tipping device (fig. 35) comprising:

a lower frame unit (514);

an upper frame unit (520) configured to tip relative to the lower frame unit; and

four lifting units (512 & 516) disposed in corner zones of the frame units.

It is noted that the phrase “test stand” as appearing in line 1 of claim 1 has not been given patentable weight because said phrase appears in the preamble of the claim wherein the body of the claim does not rely upon that phrase for completeness.

With respect to claim 2, Claps teaches the lower frame unit (514) and the upper frame unit (520) are interconnected exclusively via the lifting units (512 & 516).

The prior art’s “lifting units” are also interpreted as including the diagonal braces “560”.

With respect to claim 8, Claps suggest the claimed subject matter thereof (fig. 35).

With respect to claim 9, the lifting units of Claps are interpreted as being controlled with a control terminal via a central control unit as claimed because, although Claps has set forth various ways of lifting, all of the ways have what is interpreted as “central control unit”.

With respect to claim 11, Claps teaches a test stand for motor vehicles, having a tipping device comprising:

- a lower frame unit (514);
- an upper frame unit (520) configured to tip relative to the lower frame unit; and
- lifting means (512, 516, and associated components) attached to the lower frame unit and connectable to the upper frame that tilt the upper frame (fig. 35).

With respect to claim 12, Claps teaches lifting means (512 & 516) disposed in the corner zones of the frame units (fig. 35).

With respect to claim 15, Claps teaches tilting a vehicle in a longitudinal direction (see fig. 41).

With respect to claims 16 and 17, Claps teaches a stand for motor vehicles, having a tipping device comprising:

- a lower frame unit (514);
- an upper frame unit (520) configured to tip relative to the lower frame unit (fig. 35); and
- lifting units (556) independently extendable in an axial direction (ie. along columns 512 & 516) that tilt the upper frame.

With respect to claim 18, Claps teaches tilting a vehicle in a longitudinal direction (see fig. 41).

With respect to claim 19, Claps teaches lifting units comprising “piston rods” (512 & 516) disposed in the corner zones of the frame units (fig. 35).

*Response to Arguments*

With respect to the arguments pertaining to claims 1 and 2, the Applicant has argued that the above prior art of Claps fails to disclose or suggest four lifting units disposed in corner zones of the frame units because the elements relied upon by the Examiner are not lifting units since they do not have any lifting function.

The Examiner has considered the Applicant’s arguments but has not found the said arguments to be persuasive.

The Applicant’s arguments that the elements relied upon by the Examiner do not have any lifting function has no nexus with the actual claimed subject matter. In the Applicant’s lone original independent claim (claim 1), the Applicant has only claimed that “four lifting units” are disposed in the frame units and never has the Applicant claimed that any actually lifting is performed or how any lifting is performed. Likewise, in the Applicant’s new independent claims 11 and 16, said claims are apparatus claims which again do not claim any type of actual lifting or how that lifting occurs.

Next, the Applicant has argued that the Applicant's lifting units make use of a piston rod which can be independently raised and lowered. However, the Examiner points out that no nexus exists between the claimed subject matter of the Applicant's independent claims and these arguments. For nothing in the Applicant's independent claims mention anything about piston rods or raising and lowering.

Continuing from above, the Applicant argues that the columns 512 & 516 of the prior art are not lifting units since they do not have any lifting function. However, the Examiner argues that such columns can be interpreted as the lifting units as claimed because the Applicant has never claimed any type of such a lifting function.

Nevertheless, the Examiner does contend that columns 512 and 516 do have a lifting function because columns 512 and 516 in combination with other elements (such as the lifting hoist or fork lift) of the Claps teaching do perform a lifting function (ie. they raise, lower, and hold an upper platform with respect to a lower platform). If not, the purpose of the Claps teaching would be defeated.

The Examiner further points out that the "lifting units" of Claps are not just confined to elements 512 or 516. As the Applicant has even recognized, other elements of the Claps teaching go into the lifting units. Elements 512 and 516, only, were identified because the Applicant's claims are open ended claims which do not disallow for other such elements to be part of the lifting units. Pointing to just elements 512 and 516 was a simplification of pointing out the lifting units as a whole.

In short, the Claps teaching discloses a separate column at each of the four corners of the device thereof. These columns, along with other elements, serve to raise, lower, and tilt an upper platform (ie. frame) with respect to a lower platform (ie. frame). And as such, the Claps teaching suggests the Applicant's corresponding claimed subject matter.

And finally, if no "lifting unit" existed in the Claps teaching, the upper platform would never be able to be raised with respect to the lower platform, and thus the purpose of the Claps teaching would be defeated.

With respect to the arguments pertaining to claim 9, the Examiner contends that such a central control unit is inherent within the teaching of Claps and not one of hindsight reasoning. Claps teaches different ways of actually performing the lifting and in any of those ways a central control unit must be present because without a control lifting would not occur (for example, if the lifting was to be performed by a fork lift, a fork lift has a "central control unit" to perform lifting). Furthermore, the Applicant has never defined within the claim a "central control unit", and thus a "central control unit" in its broadest most reasonable interpretation is inherent in the Claps teaching.

35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



Art Unit: 2855

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claps (5,890,855).

With respect to claims 3 and 13, Claps does not specifically teach “piston rods”. However, it would have been obvious to one having ordinary skill in the art to interpret the columns (512 & 516) of Claps as being the “piston rods” as claimed. The motivation being that the Applicant has merely termed the claimed rods as “piston rods” and has set forth no other structure which suggests that the piston rods are pistons associated with a cylinder as is well known in the art. As such, the columns (512 & 516) of Claps are associated with the four lifting units and extend through conical holes in the lower frame unit as is claimed by the Applicant.

With respect to claim 4, Claps suggests conical frames (556) along the outer circumferences of the piston rods wherein each conical frame forms a connection between the piston rod (512 or 516) and the lower frame unit (514) when the conical frames are retracted (ie. the upper frame unit is lowered and the frames (556) rest within the lower frame unit.

With respect to claim 5, Claps fails to explicitly teach the piston rods connected to the upper frame unit via spherical bearings as claimed.

However, if not inherent, it would have been obvious to one having ordinary skill in the art to connect the two using spherical bearings.

The motivation being that although the prior art is silent with respect to such bearings, the connection of such units via spherical bearings is very well known and commonly used within the art because the failure to use such bearings would lead to premature wear.

With respect to claim 6, fig. 35 suggests the claimed subject matter thereof.

With respect to claim 10, although Claps does not specifically teach an electronic stability program test stand as claimed, it would have been obvious to one having ordinary skill in the art armed with said teaching to use said teaching as a test stand. The motivation being that since Claps discloses lifting and maintaining a vehicle from the ground level, one having ordinary skill in the art could inspect or maintain said vehicle will in the lifted position just as with a lift specifically used for such purposes. Furthermore, the teaching of Claps is interpreted as electronically stable.

With respect to claim 14, the “piston rods” (512 & 516) as interpreted above are deemed “independently operable” as claimed because each “rod” is seen as being capable of having adjustments made thereto independently of adjustments made to the others. Furthermore, the teaching of Claps is interpreted as suggesting the claimed subject matter thereof because the Applicant has not defined within the claim the meaning of “operable”.

*Response To Arguments*

With respect to the Applicant's argument pertaining to claim 3, the Examiner has considered the argument but has not found the argument to be persuasive. The Examiner has interpreted elements 512 & 516 as the piston rods as claimed because each element has a device (556) which moves therealong. Thus, since the Applicant has not given any definition within the claim suggesting otherwise, elements 512 & 516 are interpreted as "piston rods" as claimed. Furthermore, no evidence exists supporting the Applicant's argument that one having ordinary skill in the art would know a piston rod as movable.

*Allowable Subject Matter*

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims because the prior art fails to teach or suggest lateral deflection of the piston rod as claimed.

**CONCLUSION**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Eric S. McCall at telephone number (571) 272-2183.



Eric S. McCall  
Primary Examiner  
Art Unit 2855  
Oct. 28, 2004